THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14230 of 2006

13.7.2006

Between:

Sajjan Singh, S/o.Bindalal
And others

… Petitioners

AND

The Joint Collector-Additional District Magistrate,
Hyderabad District at Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14230 of 2006

ORDER:

The petitioners, who are seventeen (17) in number, filed the instant writ petition challenging the order of the first respondent, namely, the Joint Collector, Hyderabad, dated 19.6.2006 whereby and whereunder the order passed by the second respondent, namely, the Revenue Divisional Officer (RDO)-cum-Inams Tribunal, in Case No.B/4546/2002, dated 31.3.2004 was confirmed and the appeal filed by the petitioners was dismissed. The petitioners filed an application under Section 5 of A.P. (Telangana Area) Abolition of Inams Act, 1955 (the Act, for brevity) for Occupancy Rights Certificate (ORC) claiming themselves to be Kabize-e-Khadim in respect of the land admeasuring Acs.13.26 guntas comprised in survey Nos.174 to 187 (except survey No.182) situated at Gudimalkapur Village of Asifnagar Mandal in Hyderabad District (hereafter called, the subject land). After conducting enquiry, the Inams Tribunal, second respondent herein, rejected the application *inter alia* on the ground that the petitioners failed to prove their possession for a period of twelve (12) years prior to the date of vesting under the Act. The petitioners' appeal under Section 24 of the Act before the first respondent is also dismissed, aggrieved by which, the present writ petition is filed.

The petitioners' case is that they are Kabize-e-Khadim (tenants of the subject land), which is classified as Mafi Inam land. Respondents 3 to 6 are claiming as successors of original inamdar. In support of their claim that they are entitled to ORC, the petitioners filed alleged certified copies of pahanies. The Inams Tribunal entertained a doubt about these pahanies. The Tribunal called for the originals of pahanies and sent them to Forensic Science Laboratory for opinion of

handwriting expert. The said expert opined that the entries made in the pahanies submitted by the petitioners are doubtful. Accordingly, the RDO came to the conclusion that the petitioners are not entitled to ORC. The petitioners then filed appeal before the first respondent. At that stage, presumably for the reason that respondents 3 to 6 also filed an application for grant of ORC in their favour, the petitioners filed W.P.No.18276 of 2004 seeking a writ of Mandamus directing Inams Tribunal not to proceed with the adjudication of the claim of respondents 3 to 6 for grant of ORC till the appeal of the petitioners for grant of ORC is decided by the first respondent. This Court while admitting the said writ petition, passed interim orders in W.P.M.P.No.23982 of 2004 granting stay of all further proceedings before the Inams Tribunal in the matter of grant of ORC to respondents 3 to 6. Be that as it is, the petitioners contend that without recording a finding as to whether the subject land is being cultivated or not, the original as well as appellate authorities ought not to have rejected the claim for grant of ORC. It is also the contention of the petitioners that being custodian of revenue records, it was improper for the Inams Tribunal to have doubted the entries made in the pahanies and then getting opinion of the handwriting expert behind the back of the petitioners, which is totally unwarranted.

Learned Counsel for the petitioners, Sri V.Venkata Ramana, submits that both the authorities are not given any finding on the question of possession and, therefore, the jurisdiction vested in them was not exercised properly, which amounts to error in the exercise of jurisdiction. He nextly contended that the pahanies or the revenue records kept in the office of the Mandal Revenue Officer (MRO) and, therefore, they could not have been sent to the handwriting expert when certified copies produced by the petitioners were issued by the authority having proper custody of the original documents. According to the learned Counsel, Section 45 of the Evidence Act, 1872, does not enable the revenue authorities to send a questioned document to handwriting expert. It is further contended that the non-consideration of the oral evidence recorded by the Inams Tribunal is error committed by both the authorities and, therefore, the order is unsustainable.

Learned Assistant Government Pleader for Revenue (General) opposed the writ petition. He submits that when a person approaches for grant of ORC either as inamdar, Kabize-e-Khadim, occupant, protected tenant, non-protected tenant, a duty is cast on the Inams Tribunal to examine the claims of such person for grant of ORC and decide whether or not ORC should be granted. According to the learned A.G.P. if a person claims to be one entitled for grant of ORC, the burden lies on such person to produce acceptable evidence. He

would also contend that if the documents submitted by an applicant are doubtful, nothing prevents the Inams Tribunal to send them to handwriting expert.

Whether it is proper for the Inams Tribunal to send the pahanies, certified copies of which are produced by the petitioners; to the handwriting expert under Section 45 of the Evidence Act. As per Section 5(2) of Code of Civil Procedure, 1908 (CPC), a revenue court means, a Court having jurisdiction under any local law to entertain proceedings *inter alia* relating to profits of lands used for agricultural purposes. The Inams Tribunal constituted under the Act by reason of Section 35(2)(d) of the Act read with Rule 17 of A.P. (Telangana Area) Abolition of Inams Rules, 1975 (the Rules, for brevity) is governed as far as practicable by the provisions of CPC though enquiry is summary. Further, under Section 1 of the Evidence Act, the said Act applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934 or the Air Force Act. Therefore, there cannot be any objection if a revenue Court like Inams Tribunal seeks an opinion of the expert as for identity under Section 45 of the Evidence Act. Indeed, to be fair to the learned Counsel, he did pursue this argument strongly.

The certified copies produced by the petitioners were issued by the MRO from appropriate custody and, therefore, it is urged that there is no warrant to doubt them and summon the originals for sending to handwriting expert. This Court cannot accept the submission. A reading of Section 10 of the Act would show that the Inams Tribunal shall have to examine the nature and history of all lands in respect of which inamdar, Kabize-e-Khadim, permanent tenant, protected tenant or non-protected tenant claims to be registered as occupant under Sections 4, 5, 6, 7 and 8 of the Act. When Kabize-e-Khadim files an application, such person/ persons have to prove before the Inams Tribunal that he/they were in possession of the land continuously for not less than twelve (12) years before the date of vesting. Therefore, even if the claimant files some evidence, as rightly pointed out by the learned Assistant Government Pleader, it is the duty of the Inams Tribunal, to examine the nature and history of the lands. The best evidence to find, as to who is in possession of the land, is the revenue record and entries in the revenue records. Needless to mention that it is settled law that the entries made in the revenue records or revenue entries, are *prima facie* evidence of possession. Such being the legal position, this Court does not find any unsustainability in second respondent summoning the original pahanies and sending them to the handwriting expert. This Court is also not able to countenance the

submission that the expert opinion was obtained behind the back of the petitioners in violation of principles of natural justice. One should not forget that under the Act with effect from coming into force of the Act, all Inams stand abolished and the land vests in the Government subject to registration of different categories of persons as occupants of the land. It only means that when the Inams Tribunal considers the claim of a person for being granted ORC, it is only with reference to the land that vested in the Government and, therefore, it is the statutory duty of the Inams Tribunal to verify the claim from different angles. If any claim is allowed based on false, forged and interpolated documents, the same would defeat the very purpose of the Act.

The submission that the oral evidence of the first petitioners was not considered is stated to be rejected. When there was a documentary evidence before the lower authorities to disprove the case of the petitioners as Kabize-e-Khadim or their possession twelve (12) years prior to the date of vesting even if oral evidence is not considered, the same is not fatal. Be it noted that under the principles of evidence, documentary evidence prevails over oral evidence and indeed when documentary evidence is brought on record, no oral evidence is ordinarily permissible contrary to documentary evidence.

The submission of the learned Counsel for the petitioners that the order of the second respondent as confirmed by the first respondent suffers from error within the jurisdiction cannot be accepted. This is a proceeding for issue of writ of Certiorari. It is now well settled that by reason of the decision in **Syed Yakoob v. K. S. Radhakrishnan**[1], in a Certiorari proceedings unless and until the error of the lower Tribunal is grave and apparent on the face of record, the Court of Judicial review cannot reappreciate the evidence and take a different opinion even if such opinion is plausible. On considering the relevant evidence, both the authorities held that the petitioners failed to prove that they are entitled for ORC as Kabize-e-Khadim. Such finding based on fact cannot be reagitated in a petition for issue of writ of Certiorari.

The writ petition is devoid of any merit and is accordingly dismissed in limine.

(**V.V.S.RAO,J**)

July 13, 2006.

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[1] AIR 1964 SC 477